

APPEAL NO. 043124  
FILED JANUARY 24, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on September 23, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable repetitive trauma injury at (employer); that respondent 1 (carrier 1) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify her employer of her injury pursuant to Section 409.001; that carrier 1 is not relieved of liability under Section 409.004 because the claimant timely filed a claim for compensation with the Texas Workers' Compensation Commission (Commission); and that the claimant's compensable injury of \_\_\_\_\_, does not include carpal tunnel syndrome after November 4, 1998. The claimant appealed the hearing officer's determinations on the injury issues. Neither carrier 1 nor respondent 2 (carrier 2) filed a response.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Commission.

Section 410.202(a) provides that to appeal the decision of a hearing officer, a party shall file a written request for appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal or a response. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 020172, decided March 12, 2002. Rule 102.5(d) provides in pertinent part that, for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed. See *a/s/o* Rule 143.3(d)(1).

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on October 1, 2003. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on October 6, 2003, which is the date the claimant states she received the decision. The 15th day after October 6, 2003,

excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was October 27, 2003, and the 20th day was November 3, 2003. The envelope in which the claimant's appeal was mailed to the Commission contains a December 2004 postmark, and the Commission received the appeal on December 10, 2004. The claimant's appeal was filed over a year late. Section 410.169 provides in pertinent part that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

Having determined that the hearing officer's decision and order became final under Section 410.169 because a timely appeal was not filed with the Commission, the Appeals Panel does not have jurisdiction to review the hearing officer's decision.

The true corporate name of insurance carrier 1 is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

The true corporate name of insurance carrier 2 is **HARTFORD ACCIDENT & INDEMNITY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge